

March 13, 2012

Telephone: (717) 783-9454

FAX: (717) 787-8820

Linda Poliacek
The Saint Joseph's Social Club of Latrobe, PA
114 River Street
Latrobe, PA 15650

Re: Premises Extension and Outdoor Drinking

Dear Ms. Poliacek:

ISSUE: In your e-mail of February 13, 2012, you state that your club is a licensed establishment. You advise that there is a yard adjacent to your club that your club owns. You inquire whether your club's members may drink outside, either generally or if you had a privacy fence between the yard and the street. You also request information about the laws regarding allowing alcohol outside of your club's building.

Records maintained by the Pennsylvania Liquor Control Board ("Board") indicate that The Saint Joseph's Social Club of Latrobe, Pennsylvania, is the holder of Club Liquor License No. C-02854 (LID 1419) for the premises located at 114 River Street, Latrobe, Pennsylvania.

OPINION: The Liquor Code provides that no club licensee may sell any liquor or malt or brewed beverages for consumption off the licensed premises. [47 P.S. §§ 4-401(a), 4-407(a)]. Because alcohol cannot be sold at a licensed club for off-premises consumption, if the adjacent yard is not currently part of the licensed premises, the club may not allow members to carry alcoholic beverages lawfully sold in the establishment to that area. If a club member or guest leaves the licensed portion of the premises with unfinished containers of beer, wine or liquor, the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") could issue a citation to the club for engaging in the sale of alcohol for off-premises consumption.

Assuming that the yard area is not currently licensed, it would be necessary to obtain an extension of premises from the licensed premises to that area in order to

allow sales and service of alcoholic beverages beyond the club's existing licensed premises. Section 7.21(b)(2) of the Board's Regulations permits a licensee to extend its license to immediate, abutting, adjacent, and contiguous vacant land. [40 Pa. Code § 7.21(b)(2)].

Further, section 406.1 of the Liquor Code allows the Board to approve the extension of a club liquor license to include a secondary service area with dimensions of at least one hundred seventy-five (175) square feet, enclosed on three (3) sides and with adequate seating. [47 P.S. § 4-406.1]. The secondary service area must be located on property having a minimum area of one (1) acre and, although it need not physically be connected to the original licensed premises, it must be on land which is immediate, abutting, adjacent or contiguous to the licensed premises with no intervening public thoroughfare. [Id.]. Additionally, the original licensed premises and the secondary service area must be located on the same tract of land. The Liquor Code defines "tract" as "a contiguous expanse of land under the control of one person." [47 P.S. § 1-102]. Further, while the term "thoroughfare" is not defined by the Liquor Code, the Pennsylvania Commonwealth Court has defined "thoroughfare" as "a street that goes through from one street to another... an unobstructed way open to the public;" or as "a street or highway affording an unobstructed exit at each end into another street or public passage." See Gramland Properties, Inc. v. Pennsylvania Liquor Control Bd., 807 A.2d 339, 342 (Pa. Cmwlth. 2002).

An extension of premises, if granted, would be considered a permanent addition to the licensed premises. Once the extension is approved, the subject area becomes subject to all restrictions in the Liquor Code and the Board's Regulations.

You can obtain forms necessary to apply from the Board's Bureau of Licensing ("Licensing"). Licensing's telephone number is (717) 783-8250. You can also download such premises extension application forms via the Board's website, at www.lcb.state.pa.us. Click on "For Licensees" on the left side of the screen, then "Applications & Forms" on the right side of the screen, and then "Application Packet for Extension of Retail License to Cover Additional Premises."

In addition, please note that while the Liquor Code does not grant clubs the authority to sell alcohol for off-premises consumption [47 P.S. §§ 4-401(a), 4-407(a)], there is nothing in the Liquor Code that would prohibit club members from bringing their own alcohol to the club, which they could then drink outside at

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the adjacent yard. However, section 5.81 of the Board's Regulations requires a club licensee to adhere to the provisions of its constitution and/or bylaws. [40 Pa. Code § 5.81]. Therefore, club members may not be permitted to bring their own alcohol to the adjacent yard if such conduct is prohibited by the club's bylaws.

Please also note that your municipality may have a local ordinance that prohibits a person from possessing an open container of alcohol outside of a building. It is suggested that you contact your local municipality or police department for any further restrictions.

Should you have any further questions or concerns regarding the Liquor Code or the Board's Regulations, please do not hesitate to contact this office.

THIS OPINION APPLIES ONLY TO THE FACTUAL SITUATION DESCRIBED HEREIN AND DOES NOT INSULATE THE LICENSEE OR OTHERS FROM CONSEQUENCES OF CONDUCT OCCURRING PRIOR TO ITS ISSUANCE. THE PROPRIETY OF THE PROPOSED CONDUCT HAS BEEN ADDRESSED ONLY UNDER THE LIQUOR CODE AND REGULATIONS. THE LAWS AND POLICIES ON WHICH THIS OPINION IS BASED ARE SUBJECT TO CHANGE BY THE LEGISLATURE OR THE PENNSYLVANIA LIQUOR CONTROL BOARD.

Very truly yours,

FAITH S. DIEHL
CHIEF COUNSEL

cc: Pennsylvania State Police,
Bureau of Liquor Control Enforcement
Jerry W. Waters, Director of Office of Regulatory Affairs
Tisha Albert, Director, Bureau of Licensing
Jeffrey Lawrence, Acting Assistant Director, Bureau of Licensing

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